IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4929 OF 2005

Vishwas Co-operative Bank Ltd. .. Petitioners

Vs.

Nair Nandkumar Bhaskaran & Ors. ..Respondents

Mr.Y.R.Naik for the petitioners

Mr.R.S.Apte i/b N.R.Bubna for respondent no.1

CORAM : S.U.KAMDAR, J
DATED : 2ND DECEMBER, 2005

P.C.:

1. The impugned order dt.27.6.05 passed by the Appellate Court, Bombay is challenged in the petition. By the said order an appeal preferred by the plaintiff bank against the order of the Co-operative Court dt.12.4.05 was dismissed. The trial court had by the said order restrained the plaintiff bank from initiating recovery proceedings for the recovery of the debt due and payable to them till the final decision of the matter filed by the respondents herein. The main prayer in the application is that the court must take accounts and ascertain what is the amount due and payable by the respondent to the bank and till that time no

recovery proceeding should be initiated. The said injunction order granted by the Co-operative court is upheld by the Appellate court.

2. Under Section 101 of the Maharashtra Co-operative Societies Act, 1960 the plaintiff bank is entitled to apply for recovery of amount due and payable to them. At the time of the hearing of the said application accounts are bound to be taken by the Registrar and only for amount which is found due and payable a recovery certificate is issued by the Registrar. In my opinion, the present proceeding which is initiated by the respondent is with a view to dodge the claim of the plaintiff bank. An application for injunction is made to prevent the person from taking legal recourse for the recovery of amount due and payable to the bank in accordance with law. In my opinion, it is not permissible for the court to pass a restrain order preventing a person from taking legal recourse on a flimsy ground that accounts are required to be taken by the party for ascertainment of amount due and payable and only thereafter bank must initiate the legal proceedings for recovery of their dues.

In that light of the matter, both the impugned orders dt.12.4.05 and 27.06.05 are set aside. Application for interim relief dt.17.2.05 initiated by respondent no.1 is dismissed. Petition made absolute accordingly. No order as to costs. The learned counsel for the respondent states that interim order granted by the court should be continued for a certain period of time. Application for stay rejected.